

Appl. No. 09/936,404
Atty. Docket No. CM2069
Amdt. dated February 27, 2004
Reply to Office Action dated February 5, 2004
Customer No. 27752

REMARKS

The Examiner has required restriction as to Claims 1-12 (Group I), Claims 13-16 (Group II), and Claim 17 (Group III) because the inventions are distinct. For the purpose of compliance with the election request and to expedite prosecution, Applicants elect, with traverse, Group I, encompassing Claims 1-12.

The International Examining Authority recognizes that the present invention possesses unity insofar as no unity of invention objection was raised by the International Examiner. Applicants respectfully assert that the instant restriction requirement therefore is improper under PCT Article 27, Para. (1), wherein it is stated that no national law may require compliance with requirements relating to international applications that are different from or in addition to those provided for in the PCT.

Applicants further submit that the restriction requirement is improper in light of PCT Rule 13.2. According to Rule 13.2, unity of invention exists when "there is a technical relationship among those inventions involving one or more of the same or corresponding technical relationship among those inventions involving one or more of the same or corresponding special technical features." Thus, restriction is proper only when the restricted groups do not share a common technical feature that defines the invention's contribution over the prior art. In line with this argument, independent Claim 1 is directed toward a novel and unobvious cell system. Claim 13 is directed toward an article comprising a cell system. Further, Claim 17 is directed toward an easy opening means to facilitate the opening of the cells in a cell system. As such, the technical feature that links all of the Claims is a cell system. Thus, Groups I, II, and III all share a common technical feature and restriction is improper.

Applicants respectfully further submit that the Claims of Groups I, II, and III are so closely interrelated that in order to preserve unity of invention, all groups should be prosecuted in the same application. Examination would be simplified and duplicate searching eliminated by pursuing one application as opposed to two or more applications.

Further, Applicants assert that the Examiner's restriction requirement is improper in light of M.P.E.P. §§802.01, 803, and 806. "There are two criteria for a proper requirement for a restriction between patentable distinct inventions: 1) Inventions must be independent ... or distinct as claimed; and 2) There must be a serious burden on the Examiner if a restriction is not required...."

M.P.E.P. §802.01 defines "independent" as "having no disclosed relationship between the two or more subjects disclosed; that is, they are unconnected in design, operation, or effect...."

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Applicants respectfully submit that there is a disclosed relationship among the claims of Groups I-III; namely, each limitation utilizes the same novel and unobvious cell system. Thus, the article and opening means claims should not be restricted from the cell system claims. Thus, at a minimum, the subject of the instant groups do not meet the standard of an "independent" invention, as required by M.P.E.P. §802.01, for a proper restriction requirement.

A second criterion, which must be met pursuant to M.P.E.P. §803, requires a show of burden on the Examiner for restriction to be required. In this instance, since the present claims are directed towards cell systems, searching the art would necessarily involve the body of art classified therein. Applicants respectfully assert that the Examiner can, and in fact should, be able to search the present invention without serious burden. The instant groups should not be restricted, much less even further restricted to three subgroups. Having the Examiner perform the same search three or more times will lead to the same inevitable and ultimate conclusion: The apparatus is novel and unobvious and thus so are the cell system, article, and easy opening means. Therefore, the novel and unobvious cell system, article, and easy opening means will be, as a matter of law, novel and unobvious and will not require further searching other than what will be performed under the instant case.

Therefore, as required by the M.P.E.P., the instant groups are not independent inventions. Prosecuting the present invention without the Examiner's restriction does not impose a burden upon the Examiner. As such, neither of the two necessary criteria for the Examiner to establish the merited restriction requirement has been met. Thus, the restriction requirement, as presented, would be improper under current M.P.E.P. guidelines.

Respectfully submitted,
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